

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Nondiscrimination in the Distribution of	)	CS Docket No. 01-7
Interactive Television Services Over Cable	)	

**COMMENTS OF TIVO, INC.**

TiVo, Inc. (“TiVo”) submits these comments in response to the Federal Communications Commission’s (the “FCC’s” or “Commission’s”) Notice of Inquiry in the captioned matter.<sup>1</sup> TiVo offers a personalized television service that allows television viewers to customize their viewing experience using advanced searching and storing mechanisms. The TiVo service operates on a personal video recorder (“PVR”) platform which digitally records content onto a hard-disk, enabling the viewer to manipulate live television and to easily access time-shifted content. The PVR component that enables the TiVo service is sold either as an integrated component of a set-top box or as a stand-alone device which works with any multichannel video distribution system.<sup>2</sup>

**I. INTRODUCTION**

As the Commission recognizes, interactive television (“ITV”) is a rapidly-developing service that can greatly enhance the consumer’s television viewing experience. In many respects, the NOI is perhaps ahead of its time as many fundamental

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<sup>1</sup> *In the Matter of Nondiscrimination in the Distribution of Interactive Television Services Over Cable*, CS Docket No. 01-7, Notice of Inquiry, FCC 01-15, rel. Jan. 18, 2001 (“NOI”).

<sup>2</sup> For more information on TiVo see [www.tivo.com](http://www.tivo.com).

questions are still being asked, including who are ITV providers, how will ITV services be delivered, what are the business models, as so forth. Generally, when such basic questions are being asked, it is far too early for the Commission to entertain imposing regulation. However, certain attributes of ITV are well known and unlikely to change. Specifically, the data that enables many ITV services will be embedded in the video programming that is distributed to consumers over cable and satellite. Consequently, while ITV is a nascent industry, it is not too early for the Commission to establish nondiscrimination as a fundamental principle governing at least one area of ITV services that currently is, and will continue to be, integral to the development of ITV services: the passage of triggers for accessing data contained in video signals. If television programmers, advertisers, and ITV service providers can be assured that ITV triggers will not be blocked or stripped out by the distribution companies (other than for legitimate technical or security reasons), ITV services should have the best opportunity to flourish without the need for intrusive regulatory intervention into business arrangements among ITV service providers and multichannel video programming distributors (“MVPDs”).

## **I. DISCUSSION**

### **A. Certain PVR Services May Be Characterized as ITV Services.**

Using the Commission’s characterization of ITV as “a service that supports subscriber-initiated choices or actions that are related to one or more video programming

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streams,”<sup>3</sup> PVR companies generally would not be seen as providers of ITV services because the data necessary to enable customers to record programming for later viewing is distributed separate and apart from the video streams to which they relate.<sup>4</sup> PVR’s themselves may be properly categorized as navigation devices.<sup>5</sup> However, certain specific services that TiVo provides to programmers and advertisers would fall within the proposed definition of ITV services. For example, TiVo currently licenses to television programmers and advertisers a proprietary tool called “Ipreview.” This tool enables programmers and advertisers to embed data tags (or “triggers”) within the vertical blanking interval of analog television promotions to allow remote instructions from viewers for the recording of the promoted programming. In other words, an Ipreview-enabled promotional spot for “Friends” enables TiVo users to automatically record that “Friends” episode (or every “Friends” episode of the series if the user so desires) with a few clicks of their remote control.

TiVo is concerned about the ability of MVPDs to block triggers embedded in video streams. While TiVo may be very successful in convincing television programmers and advertisers to embed these triggers into their video streams, the MVPDs are still the ultimate gatekeeper and have the ability to deny consumers access to the triggers. This is not a theoretical concern. Certain programmers have hesitated or

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<sup>3</sup> NOI at para. 6.

<sup>4</sup> The Commission is correct that electronic programming guide (“EPG”) data transmitted to subscribers need not be synchronized with any particular video stream. EPG data is not related to a particular program in any conventional sense. While it is certainly more efficient to use an MVPD’s video stream (and TiVo does so where the MVPD so permits), TiVo delivers EPG data to many subscribers completely independent of the MVPD’s video stream by using a telephone connection.

<sup>5</sup> *See In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80.

declined to license Ipreview for this very reason. It is TiVo's view that as long as the triggers do not cause any increase in the bandwidth already allocated to the video signal or cause any other physical or technical harm to the MVPD, the Commission should ensure that the threat of blockage does not even loom over providers of ITV services.

**B. The Gatekeeper Position of Multichannel Distributors Is The Predicate For Commission Involvement.**

The predicate for Commission involvement in the nascent ITV business is that the overwhelming majority of consumers subscribe to only one video provider, be it cable or DBS. It doesn't really matter if there is a competitive alternative in a particular geographical area. Consumers only need one provider. Hence, video providers necessarily occupy a gatekeeping position *with respect to their customers* regardless of whether they are affiliated with any ITV service providers. If unchecked, consumers may be denied the ability to use interactive services that are either not offered, or competitive with, services offered by the MVPD. There are many business reasons why an MVPD might block ITV services – extracting concessions from programmers, blocking competitive services, favoring an affiliated company, and so on. Whatever the reason, the result is the same: the ITV services got blocked and the consumer loses.

**III. CONCLUSION**

Given the marketplace imbalance that exists and will continue to exist between the providers of ITV services and the multichannel video programming distributors, it is

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appropriate for the Commission to establish a basic principle of nondiscrimination in the passage of triggers for accessing data contained in video signals. As a new industry, many ITV services may well fail because of lack of consumer demand. However, a policy of nondiscrimination would at least help ensure that innovative ITV services have an opportunity to reach consumers and prove their worth without being stifled by discriminatory arrangements among those with market dominance.

Respectfully submitted,

**TIVO, INC.**

By: \_\_\_\_\_

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